U.S. Department of Justice

Washington, D.C. 20530

OCT 14 1983

Mr. Bernard Fensterwald, Jr.
Fensterwald & Associates
1000 Wilson Boulevard
Suite 900
Arlington, Virginia 22209

Dear Mr. Fensterwald:

This is in response to your March 29, 1983 request for access as a historical researcher to records of the Department of Justice pertaining to "the several major assassinations of the 1960's" pursuant to Executive Order 12356 and 28 C.F.R. §50.8. We regret the delay in responding to your request and your follow-up letter of June 14, 1983. However, your request is unprecedented at the Department of Justice and its true character was not recognized until your explanatory complaint for declaratory relief was received. Now that we understand the nature of your request for access, we intend to proceed under the authorities you have cited as well as 28 C.F.R. §17.111(e), a copy of which is enclosed for your information.

As a preliminary matter, however, we must ask that you specify the information that is the subject of your request. Your initial letter did not identify the records to which you seek access but referred to "the several major assassinations of the 1960's." The complaint for declaratory and injunctive relief filed by you in the United States District Court for the District of Columbia refers to your research into the assassination of John F. Kennedy, Robert F. Kennedy and Martin Luther King, Jr. In order to avoid further misunderstanding and to ensure that the proper regulatory standards are applied in processing your request, we request that you confirm to us in writing that these are in fact the records to which you seek access. When we have received that information, we will begin processing your request by identifying those components of the Department that are in possession of such records. These components will then consider your request, as it applies to unclassified records, under 28 C.F.R. §50.8, and, as it applies to classified records, Section 4.3 of Executive Order 12356 and 28 C.F.R. §17.111(e).

If classified information is involved in your request you must satisfy the criteria as set forth in 28 C.F.R. §17.111(e). After the written determination by the Security Programs Manager of the appropriate Department component that such access is consistent with the interests of national security, you will be required to consent to, and provide information necessary to support, a background investigation of such nature and extent as may be deemed necessary by the Department Security Officer to render the trustworthiness determination that is required by Department regulations before a historical researcher may be granted access to classified information. At that point you must complete a Standard Form 86, Security Investigation Data for sensitive position. Furthermore, under the terms of 28 C.F.R. §17.111(e)(4), you will be required to reimburse the government for the cost of services, including this background investigation, rendered in connection with your request. This finding of trustworthiness is only one factor making the access determination required under section in 17.111(e) and the fee is not refundable regardless of the final results of the ultimate determination of access.

Finally, please note that you will be required under the terms of 28 C.F.R. 17.111(e)(iv), if access to any classified information is granted, to sign an agreement to protect such information from disclosure and to allow the Government to review any notes, manuscripts, or materials that may be produced as a result of this access to ensure that they contain no classified information.

Again, please accept our apologies for the delay in responding to your request. We shall await your response confirming the specific object of your request and your understanding of the requirements and conditions that attach to your request under current policies and regulations.

Sincerely,

D. Jerry Rubino

D. JERRY RUBINO
Director, Security Staff
Justice Management Division